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TO: Flathead County Board of Adjustment

FROM: Mark Mussman, CFM, Director

DATE: April 7, 2020

RE: Appeal—20-01—Keane

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### Course of Proceedings

On September 27, 2019, an application was submitted for an Administrative Conditional Use Permit to allow the property located at 712 Echo Lake Road to be utilized as a short-term rental (FACU-19-41). It should be noted that this property is located on Deer Island in Echo Lake. Upon initial review of the application, it was discovered that the property was currently being marketed as a short-term rental; therefore, it was determined that this was an after the fact permit request and subject to additional fees. On December 20, 2019, the additional fees were submitted and the permit was ready to be processed. Adjacent property owner mailing occurred on December 23, 2019 giving notice to nearby property owners of the application. After complete review of the permit along with agency comments, a letter was sent to the applicant, denying the permit. The denial was based on the following:

- The subject property was not connected to a permitted septic and drainfield system and was unable to be issued a Public Accommodation License for a Tourist Home (Letter dated January 13, 2020)
- Because the location of the subject property is on an island, fire and police protection was not available (Email dated January 2, 2020)

Because of these public agency comments, required findings of fact dealing with public health, safety and welfare could not be found to support approval of this request. The following negative findings were developed to support the denial of this request:

- It cannot be found the septic system is adequate for the use of the property as a short-term rental because the dwelling is not connected to a permitted septic system.
- It cannot be found public services are adequate to serve the proposed short-term rental housing because the dwelling is not connected to a permitted septic system, and the availability of police and fire protection is not provided along with Air Rescue for medical emergencies given the location of the property on an island with no road access.

- It cannot be found the Application appears to meet all the standards listed in Section 5.11 of the Flathead County Zoning Regulations, *Short-term Rental Housing Conditional Use Standards* because the single family dwelling is not connected to a permitted septic system, Air Rescue is the only means of medical emergency support and no fire or police protection is available due to the property being located on an island with no road access.

On January 12, 2020, the applicant and property owner submitted an appeal of the denial of FACU-19-41.

### **Nature of the Appeal**

In their application to appeal the decision to deny FACU-19-41, the appellant stated the following:

- “Our property is approved for an incinerating toilet system according to the department of health. An incinerating toilet system is an adequate system for Short-term Rentals.”
- “Property owners on Deer Island, Echo Lake, have been paying taxes for emergency response ever since it was broken up into lots. There is protocol when responding to ‘remote access.’ It is to send Search and Rescue along with the other appropriate EMS service for such locations. We also can let our tenants know the risk of being on an island and have emergency plans available to them.”

### **Analysis**

Section 2.04.010 of the Flathead County Zoning Regulations states, “Any person, unit of government or agency may file an appeal when aggrieved by a decision or interpretation by the Zoning Administrator, provided that the appeal is based on an allegation that:

1. The Zoning Administrator made an error in the interpretation of these regulations, and
2. The erroneous interpretation specifically aggrieves the appellant.

In reviewing the appeal application, it appears the appellant alleges that an error was made in interpreting the regulations in stating that the property has been approved for an “incinerating toilet” and that the property owners on Deer Island pay taxes that support emergency services. However, it is only assumed that the alleged erroneous decision specifically aggrieves the appellant because they cannot utilize their property for a short-term rental.

While a Conditional Use Permit for Short-term Rental Housing is designed to be administrative and the Board of Adjustment typically is not required to make a decision regarding these applications, the review criteria is the same for the kinds of Conditional Use Permits the Board does make a decision on, and these Administrative Conditional Use Permits also require that the Zoning Administrator to make positive Findings of Fact for all of the review criteria.

Section 2.06.080 of the Flathead County Zoning Regulations states, “A Conditional Use Permit may be granted only if the proposal, as submitted, conforms to all of the following general Conditional Use Permit criteria, as well as to all other applicable criteria that may be requested.” Under the Availability of Public Services and Facilities heading in this same section, the regulations state, “The following services and facilities are to be available and adequate to serve the needs of the use as designed and proposed.” These

services specifically include sewer, fire protection, and police protection. With comments received from the Environmental Health Department stating that there is not an approved septic system which serves the property, coupled with the email comment from the Bigfork Fire Department stating that fire protection cannot be provided on Deer Island, it could not be found that this request could meet the required criteria.

It should be noted that the most serious flaw in this request is the absence of an approved septic system. An incinerating toilet does not appear to be a sufficient nor a complete method in handling all of the waste water that is generated by a residential use. Moreover, it is one thing for an individual property owner to enjoy a cabin on Deer Island during the summer months, but it appears to be a different matter when the property owner requests a permit to allow short term guests who are not familiar with the fact the area is, essentially, not served by emergency service providers.